IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CIVIL WRIT PETITION NO. 14949 OF 2006

DATE OF DECISION: OCTOBER 13, 2006

Parties Name

M/s Unitex Steels Pvt. Ltd.

..PETITIONER

VERSUS

Bank of India and others

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASBIR SINGH
HON'BLE MR. JUSTICE PRITAM PAL

PRESENT: Mr. T.K. Joshi,
Advocate, for the petitioner.

Mr. G.S.Anand, Advocate,
for the respondent - Bank

JASBIR SINGH, J. (oral)

Order.

This writ petition has been filed with a prayer that a writ of mandamus be issued directing the respondents not to take physical possession of the properties, mortgaged by the petitioner with respondents No. 1 and 2.

At the time of issuance of notion of motion, following contention of counsel for the petitioner was noticed:

"Counsel for the petitioner states that after issuance of notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Act'), no notice under Section 13 (4) of the

> Act was ever issued to the petitioner. The respondent – bank has straight-away initiated proceedings under Section 14 of the Act."

After notice, reply has been filed. A reading thereof clearly indicates that till the time, when this writ petition was filed, notice of possession, under Rule 8(1) of the Security Interest (Enforcement) Rules, 2002, was not issued. After issuance of notice of motion, notice under the above said provision was issued on September 28, 2006, and possession of the mortgaged property, was taken over, immediately thereafter. We feel the action taken by the respondent – Bank is contrary to the law laid down by this Court in Arun Kumar Arora and another v. Union of India & others, 2006(3) Law Hearld (P&H)(DB) 1908, wherein while dealing with the similar situation, a Division Bench of this Court, after taking note of the ratio of the judgment of another Division Bench of this Court in Kalyani Sales Company v. Union of India, 2005(4) Law Herald (P&H)(DB) 801, has observed thus:

> "This Court in the case of M/s Kalyani Sales Company & another (supra) had taken note of the judgment of the Hon'ble Supreme Court in Mardia Chemicals Ltd.'s case (supra) and thereafter has come to the conclusion that the secured creditor is entitled to take the symbolic possession of the property under Section 13 (4) of the Securitisation Act 2002, so that application, under Section 17 of the Act, does not become illusory or meaningless. The judgment in M/s Kalyani Sales Company's case (supra) applies to the present case, as the right of the petitioners to have adjudication of the possession sought

> to be defeated by taking physical of the property. The learned Debts Recovery right in ordering that the possession be matter, is delivered back to the petitioners. During the pendency of the application under Section 17 of the Act, as the petitioners were admittedly in physical possession of the property and running their business from the said property. Section 14 of the Securitisation Act, 2002 cannot be interpreted to defeat the rights granted to a party, who under Section 17 of the Act is entitled to have their objections adjudicated. A reading of Section 14 of the Securitisation Act, 2002, itself makes it clear that it is only when possession of asset is required to be taken by the secured creditor or the same is required to be sold or transferred by the secured creditor under the provisions of the Act, it is then that an application can be made. Section 14 of the Act has to be read with the provisions of Sections 34 and 17 of the Act and cannot be interpreted to defeat the right of the parties under Section 17 of the Act, as is sought to be done by the Bank and, therefore, we do not agree with the contention raised by the respondent – Bank or with the findings recorded by the Debts Recovery Appellate Tribunal that the possession has been taken in consonance with the law laid down by this Court."

In view of the facts, mentioned above, this Court feels that the respondent – Bank was not justified in taking over possession of the mortgaged property after issuing the notice, as has been observed by this Court in Arun Kumar Arora's case (supra). As such taking over of the

possession cannot be sustained and the action is quashed. Respondent – Bank is directed to return possession to the petitioner forth-with. However, to maintain equity, it is ordered that the petitioner shall deposit the amount, beyond the limit of Rs. 10,00,000/-, with the respondent – Bank within two weeks from today, and thereafter may take up the matter with the Bank for regularisation of its accounts. Disposed of .

Copy of this order be given Dasti on payment of usual charges.

(Jasbir Singh)
Judge

(Pritam Pal)
Judge

October 13, 2006.
DKC